

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

CHAMBLESS ENTERPRISES LLC; and
APARTMENT ASSOCIATION OF
LOUISIANA, INC.,

Plaintiffs,

v.

CENTERS FOR DISEASE CONTROL
AND PREVENTION; ROBERT R.
REDFIELD, in his official capacity as
Director, Centers for Disease Control and
Prevention; NINA B. WITKOFISKY, in her
official capacity as Acting Chief of Staff,
Centers for Disease Control and Prevention;
ALEX AZAR, in his official capacity as
Secretary of Health and Human Services;
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; WILLIAM P. BARR,
in his official capacity as Attorney General of
the United States,

Defendants.

Case No. 3:20-cv-01455-TAD-KLH

JUDGE TERRY A. DOUGHTY

MAGISTRATE JUDGE KAREN L.
HAYES

**DECLARATION OF ERIN E. BABICH RUNGE IN SUPPORT OF
PLAINTIFFS' REPLY IN SUPPORT OF THEIR
MOTION FOR PRELIMINARY INJUNCTION**

I, ERIN E. BABICH RUNGE, make this declaration and state:

1. I am over the age of 18, have personal knowledge of the facts set forth herein, and am competent to testify.

2. Attached as Exhibit A is a true and accurate copy of a memorandum written by me, Erin E. Babich Runge, M.A., addressing several data-based components of the case, *Chambless Enterprises LLC, et al. v. Centers for Disease Control and Prevention*.

3. Section I.A. includes information provided by Nolo, an online resource that responds to legal and business questions, to explain the legal process used for evictions in the State of Louisiana. Landlords must first go through court proceedings before they may legally evict a tenant. Accessed on December 11, 2020.

4. Section I.A. cites *Social Forces*, an academic journal, regarding landlord use of eviction filings to collect unpaid rent and fees rather than evict tenants. Roughly one-third of landlords have no intention of ever evicting their tenants when filing for eviction, but rather, they use eviction filings to collect rent and fees. Accessed on December 11, 2020.

5. Section I.A. uses data collected by Princeton University's Eviction Lab to create a table showing the reduction of eviction filings in the year 2020 compared to their historical averages, accessed on December 9, 2020 and December 11, 2020.

6. Section I.B. cites the Louisiana state government for dates of state-based eviction moratoria, accessed on December 11, 2020.

7. Section I.B. cites Princeton University's Eviction Lab to provide eviction and eviction filing rates in Louisiana, accessed on December 11, 2020.

8. Section I.B. cites the prestigious academic journal, *The Lancet*, to present information from the scientific community on COVID-19 transmission showing that transmissions

primarily occur between individuals living in the same household and the subsequent rate of infection is lowered after the household member became infected. Accessed on December 11, 2020.

9. Section II.A. presents data from the U.S. Interagency Council on Homelessness and the National Alliance to End Homelessness to calculate the number of unsheltered individuals in Louisiana, accessed on December 11, 2020.

10. Section II.B. uses data collected from the U.S. Census Bureau and the Louisiana Department of Health to calculate the percentage of unsheltered individuals who have contracted SARS-CoV-2 in Louisiana. Accessed on December 11, 2020.

11. Section II.C. cites academic studies on eviction and homelessness rates, showing that many do not become homeless upon eviction and the disinclination of landlords to evict tenants during an economic downturn. Accessed on December 9, 2020 and December 11, 2020.

12. Section III. cites the National Council of State Housing Agencies that found the likelihood of renters to pay rent owed after becoming evicted was lower with annual incomes of less than \$50,000. Accessed on December 9, 2020.

13. Section III. cites the National Multifamily Housing Council that found approximately 3.4% to 4.8% of tenants who miss rent payments do not pay rent by the end of the month. Accessed on December 9, 2020.

14. Section IV. presents vacancy data from the U.S. Census Bureau showing stability in vacancy rates regardless of the pandemic. The vacancy rates were used to calculate the average percent change in rate for each quarter since 2015, showing lower vacancy rates—and thus more housed individuals—in 2020 compared to 2019. Accessed on December 9, 2020.

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct.

Executed in Sacramento, California, on December 14, 2020.

A handwritten signature in black ink, appearing to read 'E. Babich Runge', written over a horizontal line.

Erin E. Babich Runge, M.A.
Strategic Research
Pacific Legal Foundation

Memorandum

Date: December 14, 2020

By: Erin E. Babich Runge

Re: *Chambless Enterprises LLC, et al. v. Centers for Disease Control and Prevention*

I. Eviction filings are lower than their historic averages regardless of a federal eviction moratorium

A. Eviction Filings versus Evictions During the Pandemic

Eviction filings are not synonymous with evictions. In the State of Louisiana, landlords must file for eviction and go through the [court process](#) before a tenant is ever legally evicted. Furthermore, approximately one-third of landlords use eviction filings as means to [collect fines and fees, not evict tenants](#). These eviction filings do not result in the eviction of the tenant, but in a court order of the tenant to pay the landlord. By placing a moratorium on eviction filings, the government is hindering a landlord's ability to leverage eviction to collect fees and rent.

Princeton University's Eviction Lab provides monthly data on *eviction filings*—not evictions—from the year 2020 as a percentage of historical averages (2012-2016). Their data show that, despite a break in federal moratoria from June 24, 2020, through September 4, 2020, eviction filings did not skyrocket across the nation as expected, and neither did the wave of predicted evictions.

When looking at the cities closely tracked by the Eviction Lab for monthly eviction filings as a percentage of their historical averages, we find that almost all cities were *below* their historical averages during the time the eviction moratoria were not in effect, indicating the federal moratoria may have had minimal effect on eviction filings compared to local eviction moratoria already in place.

The following table shows the monthly number of eviction filings in 2020 for the cities tracked by the Eviction Lab. All but four instances of eviction filings were lower than their historical averages after the pandemic began in March, and those three were: Austin, Texas (March, +7), Gainesville, Florida (November, +6%) and Milwaukee, Wisconsin (June, +17% and July, +7%). There were no cases of eviction filings being greater than or equal to their historical averages between eviction moratoria, as would be indicated in the August and September columns.

Table 1. 2020 City Eviction Filings as a Percentage of Historical Average (2012-2016)

City	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
Austin, TX	+31	+54	+7	-97	-96	-84	-93	-94	-92	-91	-92
Boston, MA	+4	-4	-29	-84	-99	-99	-98	-99	-98	-94	-39
Bridgeport, CT	-7	-16	-10	-92	-98	-98	-92	-92	-84	-78	-67
Charleston, SC	-12	-2	-43	-100	-75	-63	-66	-63	-51	-64	-56
Cincinnati, OH	+1	+4	-37	-75	-70	-67	-57	-37	-34	-36	-26
Cleveland, OH	-23	-19	-70	-100	-100	-33	-55	-58	-61	-62	-51

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Columbus, OH	-2	+3	-49	-78	-76	-52	-53	-41	-25	-25	-16
Fort Worth, TX	+22	+33	-21	-96	-86	-73	-74	-58	-52	-62	-56
Gainesville, FL	-7	+35	-8	-86	-84	-78	-79	-41	-9	-3	+6
Greenville, SC	+24	+30	-4	-100	-51	-56	-61	-38	-32	-41	-31
Hartford, CT	-3	0	-12	-86	-99	-98	-92	-94	-92	-82	-65
Houston, TX	+16	+34	-15	-84	-74	-61	-55	-59	-60	-56	-42
Indianapolis, IN	+22	+36	-46	-100	-99	-98	-96	-44	-24	-40	-40
Jacksonville, FL	+9	+26	-14	-95	-97	-95	-95	-24	-17	-13	-5
Kansas City, MO	-7	-15	-25	-78	-76	-71	-66	-45	-50	-56	-64
Memphis, TN	+1	+1	-30	-82	-71	-57	-53	-55	-38	-32	-35
Milwaukee, WI	+21	+26	-50	-99	-95	+17	+9	-36	-59	-45	-39
Minneapolis-SP, MN	-13	-17	-56	-97	-98	-96	-96	-95	-94	-92	-88
New York, NY	-27	-32	-54	-100	-100	-100	-90	-73	-61	-59	-70
Philadelphia, PA	+11	+3	-51	-100	-100	-100	-90	-91	-62	-60	-65
Phoenix, AZ	+5	+24	-5	-62	-71	-70	-70	-67	-53	-48	-46
Pittsburgh, PA	+9	+7	-51	-100	-100	-95	-94	-94	-25	-60	-62
Richmond, VA	-16	-8	-34	-89	-80	-91	-74	-62	-42	-37	-81
South Bend, IN	+29	+2	-69	-93	-92	-81	-86	-51	-42	-53	-57
St. Louis, MO	+12	+7	-21	-89	-87	-88	-64	-55	-62	-70	-58
Tampa, FL	-2	+3	-14	-76	-76	-84	-86	-50	-24	-13	-2
Wilmington, DE	-9	-1	-48	-100	-99	-98	-74	-68	-54	-54	-53

Source: <https://evictionlab.org/eviction-tracking/>

B. Louisiana Eviction Filings and the Spread of COVID-19

The state of Louisiana placed a statewide [eviction moratorium](#) from [May 15, 2020](#) extended through [June 15, 2020](#). Louisiana has not since had a state-based [eviction moratorium](#). As of 2016 (later data not available), the Eviction Lab found the [eviction filing rate](#) in Louisiana is 5.95% (lower than the national average of 6.12%) and the actual [eviction rate](#) is as low as 2.64%.

The CDC did not wholly accept the results from a journal [article](#) from *The Lancet* and claimed that evicted tenants would likely move into close quarters with others and thus spread COVID-19: “...32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding. Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID-19 than other close contacts.”

Although it is true that the study found SARS-CoV-2 transmission mostly occurred through close contacts, such as individuals living together in a household, **less than one in six of those contacts were infected**, and had an even **lower subsequent infection rate** after the household member was infected.

Furthermore, that same study—cited by the CDC—acknowledged that the impact of isolation and contact tracing was uncertain because the number of asymptomatic cases is unknown. Therefore, the degree to which eviction moratoriums will prevent the spread of COVID-19 is also unknown.

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II. Do most people become homeless upon eviction?

A. Louisiana and Homelessness

Louisiana has a relatively low homeless rate compared to other U.S. states. The U.S. Interagency Council on Homelessness shows that Louisiana's homelessness rate for "Total People Experiencing Homelessness" in 2019 was only [0.52%](#) of the state's population, and just [446](#) experience chronic homelessness. Of the homeless population, only [41%](#) are unsheltered. If we examine how many chronically homeless residents are unsheltered, there are 183 individuals.

B. Homeless Residents in Louisiana have been mostly protected during the Pandemic

There is widespread concern over the spread of COVID-19, particularly among vulnerable populations. Louisiana is home to approximately [4.649 million people](#). Of those, roughly 24,175 are homeless. Of the homeless population, there have only been [157 cases of COVID-19](#) with 116 positive tests and 1 reported death as of August 25, 2020. This is just 0.0034% of the state's total population.

C. Eviction and Homelessness: Academic Studies

Studies show that most people find alternative forms of shelter upon eviction.

Desmond, Matthew, and Tolbert Kimbro, Rachel. "[Eviction's Fallout: Housing, Hardship, and Health](#)." *Social Forces*, 94 (1) (2015): 295-324.

A survey of tenants in housing court who received eviction judgments found: "14 percent planned to live with kin or friends, 15 percent had found another apartment, 12 percent were planning on staying in a hotel or shelter or on the street, and the remaining 53 percent simply did not know where they would stay after their eviction ([Desmond 2012](#))."

Desmond, Matthew. "[Eviction and the Reproduction of Urban Poverty](#)." *American Journal of Sociology*, Volume 118 (1) (2012): 88-133.

The economic pressures of the pandemic on small landlords may make them *more inclined to keep renters*. Desmond found that landlords may be more likely to work something out with tenants who are behind in rent if the landlords themselves are struggling to survive. He cited the years of economic recession (2008 and 2009) where evictions did not increase.

"Landlords with properties in foreclosure may have chosen not to invest the time and money to evict tenants only to have the bank take the building in the end. Others feeling the pinch may have been more willing to work with tenants who had fallen behind.

Whatever the case may be, the crucial point for our purposes is that the recession years of 2008 and 2009 saw no spike in evictions."

Lindblom, Eric. "[Toward a Comprehensive Homelessness-Prevention Strategy](#)." *Housing Policy Debate* 2, no. 3 (1990): 957-1025.

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Evictions that result in homelessness are often due to no prior notice. Because Louisiana requires landlords to go through the court system before they can evict a tenant, the tenant has more time to find alternative housing, thus avoiding homelessness.

“22 percent of the homeless persons who lost their residence to eviction, as reported in the Chicago Community Trust study, had no prior notice, and another 28 percent had fewer than six days to find new housing before eviction.”

“[Protect Tenants, Prevent Homelessness](#).” *National Law Center on Homelessness and Poverty* (2018).

This report cited the following research findings regarding those who blame eviction for their homelessness: 12 percent of New Yorkers, 14 percent of homeless residents in Santa Cruz, California, and 12 percent of homeless residents in San Francisco.

III. The Plaintiffs’ economic losses are not likely compensable

Late payments and non-payments are strongly associated with very low incomes. Renter households with annual incomes of [less than \\$50,000](#) will constitute 71% of the estimated eviction filings by January 2021. These low-income individuals are *unlikely have the income to pay the owed rent* after becoming evicted.

According to the National Multifamily Housing Council, the [percentage](#) of rent payments made by the end of the month ranged from 95.2% to 96.6% from May 2019 to November 2019, respectively. So, we can assume *approximately 3.4% to 4.8% did not pay rent* in that time period.

IV. Louisiana vacancy rates show that most tenants are remaining housed compared to prior year rates

Vacancy rates may aid in identifying whether evictions are displacing tenants more than they can relocate to a new home. Looking at U.S. Census vacancy data from the State of Louisiana, they show that vacancy rates are lower in 2020 when compared 2019. This may indicate that most tenants are remaining housed at greater rates regardless of eviction moratoria.

Table 2. 2015-2020 Louisiana State Quarterly Percent Vacancy Data

Year	Q1	Q2	Q3	Q4
2015	8.8	8.7	9.7	12.8
2016	13.6	10.8	11.9	9.4
2017	9.6	10.3	10.8	11.9
2018	11.3	10.8	8.7	9.6
2019	11.5	8.8	10.7	11.7
2020	9.4	6.5	8.7	-
Percent change 2019-2020	-18.3	-26.1	-18.7	-

Source: <https://www.census.gov/housing/hvs/data/rates.html>